

ARIZONA STATE SENATE

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TO: MEMBERS OF THE SENATE
COMMERCE COMMITTEE

DATE: February 6, 2023

SUBJECT: Strike everything amendment to S.B. 1117, relating to housing; infrastructure

Purpose

Establishes residential zoning district regulations, limitations of residential housing design standards, municipal housing need assessments and the Rural Housing Infrastructure Grant Program (Grant Program). Modifies current municipal zoning requirements. Increases funding sources to the Arizona Housing Trust Fund (Fund).

Background

Statute authorizes municipalities to adopt zoning ordinances and codes to conserve and promote the public health, safety, convenience and general welfare and outlines zoning guidelines and requirements ([A.R.S. Title 9, Ch.4, Art. 6.1](#)). The governing body of a municipality must adopt by ordinance a citizen review process that applies to all rezoning and specific plan applications that require a public hearing. The citizen review process must include at least: 1) notifying adjacent landowners and other potentially affected citizens of the application; 2) informing adjacent landowners and other potentially affected citizens on the substance of the proposed rezoning; and 3) providing adjacent landowners and other potentially affected citizen an opportunity to express any issues or concerns regarding the rezoning. Any zoning ordinances that propose to change property from one zone to another, that imposes any regulation not previously imposed or that removes any such regulation previously imposed must be adopted following the procedure prescribed in the citizen review process and in the manner set for public hearings ([A.R.S. § 9-462.03](#)).

The Fund is administered by the Arizona Department of Housing (ADOH) and consists of: 1) an annual \$2.5 million allocation from unclaimed property sales; 2) the Arizona Industrial Development Authority single-family mortgage program year-end balance; and 3) interest earnings generated by the Fund. The Fund provides grants to develop projects and programs connected with providing housing opportunities for low- and moderate-income households and for housing affordability programs. A portion of the Fund monies must be used exclusively for housing in rural areas. Fund monies may be spent on constructing or renovating facilities and on housing assistance, including support services, for persons who have been determined to be seriously mentally ill and to be chronically resistant to treatment (A.R.S. §§ [41-3955](#) and [44-313](#)).

If the reallocation of unclaimed property sale proceeds changes the amount deposited into the state General Fund, there may be a fiscal impact associated with this legislation.

Provisions

Residential Zoning Districts

1. Declares that housing supply and affordability are matters of statewide concern.

2. Asserts that the regulation of housing within residential zoning districts and through amendments to other zoning districts is not subject to further regulation by a city, town or political subdivision of Arizona, including a charter city.
3. Requires, by January 1, 2024, a municipality to adopt an amendment to its zoning ordinance that requires the municipality to do the following on any rezoning of land to a residential use:
 - a) administratively approve the application within 30 days if the land being rezoned to a residential use conforms in all material respects with the land use designation contained in the most recent voter-approved general plan; and
 - b) determine whether the application is administratively complete within 30 days after receiving the application.
4. Requires the municipality, if an application is determined to not be administratively complete, to follow the statutory procedures for review of administrative completeness, until the application is administratively complete.
5. Requires the municipality to determine whether a resubmitted application is administratively complete within 15 days of receipt.
6. Requires, after determining that an application is administratively complete, the municipality to approve the application within 90 days, unless a property owner within the zoning area demonstrates by clear and convincing evidence that the proposed housing units will create an objective externality to the property owner while on the owner's property that has not been mitigated.
7. Deems an applicant to have mitigated any objective externalities related to water runoff, traffic or parking if the municipality has an adopted code, ordinance, standard, regulation or other legal requirement for:
 - a) grading and drainage; and
 - b) required street improvements, including stormwater and street improvement development fees in accordance with statute.
8. Prohibits the municipality's identified objective externalities, including any mitigation measures prescribed by code, ordinance, standard, regulation or other legal requirement, from creating an undue burden on the development and construction of new housing units.
9. Requires the application for changes to the municipality's zoning ordinance to be adopted following a public hearing before the governing board of the municipality.
10. Requires the notice and place of the public hearing, including a general explanation of the matter, to be provided in accordance with public hearing requirements.
11. Allows the municipality, at its discretion, to require a public hearing before a planning and zoning commission if the required hearings take place with the outlined time frame.
12. Requires the municipality, if it is found that a property owner within the zoning area proved an objective externality by clear and convincing evidence, to:
 - a) specifically identify the least restrictive mean to sufficiently mitigate the identified objective externality; and
 - b) conditionally approve the application subject to the specifically identified mitigation measures.

13. Allows an applicant, following the municipality's finding, to bring an action in superior court to challenge the finding that the owner of property within the zoning area met the burden of showing by clear and convincing evidence that the proposed development will create an objective externality to:
 - a) the property owner while on the owner's property; and
 - b) the municipality's specifically identified least restrictive means of mitigating the identified objective externality.
14. Requires the trial, in any judicial action brought, to be *de novo*.
15. Prohibits the court from using any deferential standard to the findings of the municipality.
16. Requires, by January 1, 2024, a municipality to allow by right, in any existing commercial, mixed-use or multifamily residential district or any land designated by the municipality's most recent general plan as supporting commercial, multifamily or mixed use, the construction of multifamily dwelling units with the following development standards:
 - a) the greater of the highest allowed height for the site of the housing development, the highest allowed height for a commercial or residential use within one mile of the site of the housing development or 60 feet;
 - b) the maximum height limit may not be less than 80 feet, if the housing development is located within two miles of a rail stop; and
 - c) the density limit applicable to the multifamily development must be at least the greatest allowed density for a previously approved mixed use or residential use within the municipality.
17. Requires, by January 1, 2024, a municipality to allow by right, in any existing commercial, mixed-use or multifamily residential district or any land designated by the municipality's most recent general plan as supporting commercial, multifamily or mixed use, an applicant to construct housing without the municipality requiring a general plan amendment, use permit or review by a board or commission.
18. Specifies that the residential zoning district requirements do not apply to:
 - a) any land within the immediate vicinity of a military airport or ancillary military facility; or
 - b) a municipality with a population of less than 25,000 persons.
19. Excludes a modification made in accordance with the residential zoning districts regulation from the citizen review process outlined for zoning changes.

Residential Housing Design Standards

20. Prohibits a municipality from adopting or enforcing any ordinance, code, standard, regulation, guideline, agreement, stipulation or other legal requirement related to or regulating residential housing design elements.
21. Prohibits a municipality from withholding a building permit or other approval that is necessary as a condition of construction for failure to comply with any ordinance, code, standard, regulation, guideline, stipulation or other legal requirement related to or regulating residential housing design elements.

22. Allows any applicant for an approval that is necessary to obtain a building permit to construct a single-family, two-family or multifamily building or any housing organization to bring action in the superior court to enforce the requirements on residential housing design standards.
23. Specifies that the requirements on residential housing design standards do not apply to any ordinance, code, standard, regulation, guideline, agreement, stipulation or other legal requirement that is:
 - a) a requirement of an adopted minimum standard building code, including any local amendments that are less restrictive than the unamended minimum standard building code;
 - b) applicable solely to structures located in an area designated as a local district of historical significance or an area designated as historic on the national register of historic places;
 - c) applicable solely to structures individually designated as local, state or national historic landmarks;
 - d) applied to manufactured homes in a manner consistent with state and federal law;
 - e) required as a condition of participating in the national flood insurance program; and
 - f) a stipulation on a recorded subdivision plat adopted by the municipality before the effective date.
24. Specifies that the requirement on residential housing design standards does not affect the validity or enforceability of private covenants or other contractual elements among property owners relating to dwelling design elements by parties other than the municipality.
25. Specifies that the requirement on residential housing design standards does not apply to a municipality with a population of less than 25,000 persons.

Municipal Zoning Regulations

26. Excludes areas zoned for residential use from the ability granted to a municipality to establish by ordinance requirements relating to off-street parking and loading.
27. Precludes a municipality, in any zone that permits single-family residential uses, from prohibiting the following:
 - a) lots 4,000 square feet in area or greater;
 - b) lot widths 40 feet or greater;
 - c) front setbacks 10 feet or greater, except for portions of dwelling that are occupied by a garage, in which the front setback may be 20 feet; and
 - d) side yard setbacks 5 feet or greater.
28. Eliminates the ability, within residential zones, for the regulations to permit modifications to minimum yard lot area.
29. Requires a municipality to provide additional residential zoning that allow for construction of duplexes, triplexes, lots smaller than 4,000 square feet and other housing types proposed by applicants.
30. Prohibits a municipal regulation or ordinance from preventing or restricting single-room occupancies.

31. Specifies that the zoning regulation statute does not affect the validity or enforceability of private covenants or other contractual elements among property owners relating to dwelling design elements by parties other than the municipality.
32. Eliminates the requirement for preliminary and final plats to be approved by a legislative body.
33. Requires a municipality to prescribed procedures for the administrative approval of all final plats.
34. Requires the municipality, at the applicant's request and after preliminary plat submittal and approval from the Department of Environmental Quality, to issue an at-risk permit for grading, earthmoving and infrastructure construction that relates to the property that is subject of the preliminary plat.
35. Requires the at-risk permit to grant the applicant the right to enter, remain on and cross over any municipal easements or rights-of-way:
 - a) to the extent reasonably necessary to allow construction, maintenance or repair of the infrastructure; and
 - b) if the applicant's use of the easements and rights-of-way do not materially impede or adversely affect the municipality's use and enjoyment of the easement and rights-of-way.
36. Allows the municipality to require the applicant to restore the easements and rights-of-way to the condition the easements and rights-of-way were in before the applicant's entry, subject to ordinary wear and tear, casualty damage and damage caused by third parties not engaged or affiliated with the applicant.
37. Specifies that the municipality issuing an at-risk permit does not constitute final preliminary plat approval or final approval of any grading, drainage or infrastructure construction plans.
38. Specifies that any work, services or materials accomplished or acquired by the applicant or its agents is done at the financial risk of the applicant.
39. Allows the municipality to require that all grading, earthmoving and construction be done in compliance with all municipal codes, ordinances and standards and other legal requirements.

Municipal Licensing Requirements

40. Entitles a person to have a municipality not base a licensing decision in whole or in part on licensing conditions or requirements that are not objective.
41. Prohibits a municipality from basing a licensing decision in whole or in part on a licensing requirement or condition that is not objective.
42. Defines *objective* as involving no personal or subjective judgment by a municipal employee or official and being uniformly verifiable by reference to an external and uniform benchmark, standard or criterion that is available and knowable by both an applicant or proponent and a municipal employee or official.
43. Eliminates the exemption to the municipal licensing time frame requirement for a license necessary for the construction or development of a residential lot, including swimming pools, hardscape and property walls, subdivisions or master planned communities.

44. Requires a municipality, in establishing licensing time frames, to consider the impact on the supply and cost of housing from unnecessary delays in the approval and permitting process.
45. Requires, within five working days of an applicant's request, a municipality during the substantive review time frame to:
 - a) meet or discuss with an applicant the request for corrections; and
 - b) provide sufficient information and instruction to allow the applicant to provide requested corrections, within five working days following a request by the applicant.
46. Prohibits a municipality from denying a license application that is necessary for land development or building construction unless the municipality considers the application withdrawn, except for an application submitted for a change in zoning.
47. Requires a municipality to refund all fees charged for reviewing and acting on an application for a license and excuse payment of any fees that have not yet been paid if the municipality does not issue the applicant the written or electronic notice conditionally granting a license within the overall time frame or mutually agreed on time frame extensions.
48. Requires the application, if for a license or approval necessary for land development or building construction, to be deemed approved if the municipality does not issue the applicant the written or electronic notice granting or conditionally granting the license or approval within the overall time frame or within the mutually agreed on time frame extension.
49. Excludes a final certificate of occupancy or a final inspection for land development or building construction from the requirement to deem the application approved.

Municipal Housing Needs Assessment

50. Requires a municipality, beginning January 1, 2024, and every five years thereafter, to publish a housing needs assessment that includes at least the following:
 - a) the total population and job growth projected for the subsequent five-year period;
 - b) the total need for additional residential housing units for rent and sale in the municipality to meet any deficiencies in housing the existing population and the existing workforce; and
 - c) the total need for additional residential housing units for rent and sale in the municipality to meet the population growth projections, the job growth projections and the housing needs across all various income levels.
51. Requires each municipality, beginning January 1, 2025, to submit an annual report accounting for:
 - a) the total number of proposed residential housing units submitted to the city or town;
 - b) the total number of net new residential housing units submitted to the city or town; and
 - c) the total number of net new residential housing units that are entitled, have been platted, have been issued a building permit and have received a certificate of occupancy by the municipality.
52. Requires the annual report to also include the following:
 - a) the number of housing development applications received in the prior year;
 - b) the number of housing units for sale and rent, including in all development applications in the prior year;

- c) the number of housing units for sale and rent approved and disapproved or otherwise not approved in the prior year;
- d) the status and progress in meeting the municipality's housing needs; and
- e) a plan that specifies how the municipality intends to satisfy the identified need for additional housing units within the municipality.

53. Requires the annual report to be submitted to ADOH.

54. Specifies that the reporting requirements do not create a requirement for a municipality to meet or otherwise fulfill the projections in the housing need assessment.

Rural Housing Infrastructure Grant Program

55. Establishes the Grant Program to facilitate the construction of new residential housing units and provide for diversity of housing types needed in rural areas.

56. Requires ADOH to administer the Grant Program.

57. Allows grant recipients to use monies to construct limited necessary public services or facility expansion that will predominantly serve residential housing units in city, town or county service areas.

58. Requires applicants to submit an application for grant monies to ADOH in a manner prescribed by ADOH.

59. Requires ADOH to establish an application form, process and procedure by which grant monies are awarded.

60. Requires an applicant, to be eligible to receive a grant, to demonstrate to ADOH that it meets all of the following requirements:

- a) the applicant is a city or town with a population of less than 25,000 persons or a county with a population with less than 500,000 persons;
- b) the city, town or county has an identified housing shortage;
- c) the city, town or county has identified a shortage of limited necessary public services or facility expansion as a barrier to constructing new housing units;
- d) the infrastructure to be constructed is a limited necessary public service or facility expansion;
- e) the infrastructure to be constructed predominately serves new residential housing units regardless of housing type; and
- f) the city, town or county has removed any code, ordinances, standards or other legal requirements that would restrict the construction of new housing of any type.

61. Requires the Grant Program to be funded through the Fund.

62. Requires the city, town or county to amend an adopted infrastructure improvements plan within 60 days after notification of an award, if the infrastructure for which the grant was awarded is identified in an infrastructure improvements plan.

63. Prohibits a city, town or county from assessing a development fee for any infrastructure project for which a grant was awarded.
64. Prohibits ADOH from requiring the construction of a specific housing type or project as a condition of grant approval.
65. Requires ADOH, beginning December 31, 2024, to provide the Legislature, the Governor and Secretary of State with an annual report on the following information:
 - a) the amount of grant monies that were provided to rural cities, towns and counties;
 - b) the amount of residential housing units that were built using grant program monies; and
 - c) which rural areas received grant program monies.

Arizona Housing Trust Fund

66. Requires Fund monies to be spent on funding the Grant Program.
67. Requires the Arizona Finance Authority (ACA), at the end of the fiscal year, to transfer all unencumbered monies in the ACA Operations Fund in excess of the ACA's operating cost to the Fund, rather than to the Economic Development Fund
68. Deposits, annually, 55 percent of unclaimed property sale proceeds into the Fund, rather than \$2,500,000.

Miscellaneous

69. Defines terms.
70. Makes technical and conforming changes.
71. Becomes effective on the general effective date.